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SUPREME COURT, U. S.

No. [redacted]

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

WILLIAM A. ACOSTA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1447

WILLIAM A. AGORANOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted on three counts of wilfully attempting to evade his income tax for the years 1960, 1961 and 1962, by filing false and fraudulent returns, in violation of 26 U.S.C. 7201. He was sentenced to four months' imprisonment and two years' probation. The court of appeals affirmed (Pet. App. 7–10).

A special agent of the Internal Revenue Service interviewed petitioner in July 1963 in petitioner's parked car in Sanford, Florida (R. 54). Petitioner advised him that he had loaned $1,100 to one Tubman (the subject of the agent's investigation) about 1953, and that Tubman had repaid him in 1962 (R. 62–

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63). The agent was investigating Tubman rather than petitioner, who was, however, under investigation at the same time by other Treasury agents. At trial the agent's testimony as to petitioner's statements regarding his transactions with Tubman was admitted in evidence as part of the government's net worth case. The sole contention raised in the instant petition is that the admission of this evidence was improper because petitioner had not been warned of his constitutional rights as required by *Miranda* v. *Arizona*, 384 U.S. 436.

1. Evidence of petitioner's conversation with the agent was not of an incriminating nature, for it was offered only to show that petitioner had an additional asset (a loan receivable from Tubman) at the starting point of the net worth computations, and hence in effect received $1,100 of non-taxable funds in the year 1962 (a prosecution year), when Tubman repaid him. This evidence worked to petitioner's benefit, not against him, in the proof on which the government's case was based.

2. Assuming *arguendo*, as the court below did (Pet. App. 9), that the introduction of this evidence prejudiced petitioner, his argument is still without merit. It is clear that petitioner was not in custody or deprived of his freedom in any way when questioned by the agent. He was therefore not subject to the kind of governmental compulsion that the requirements of *Miranda* were designed to prevent. Significantly, the courts of appeals in eight other circuits have agreed

that the *Miranda* warnings are not required in such a case, and this Court has consistently declined to consider this issue. *Morgan* v. *United States,* 377 F. 2d 507, 508 (C.A. 1); *Spinney* v. *United States,* 385 F. 2d 908 (C.A. 1), certiorari denied, 390 U.S. 921; *United States* v. *Squeri,* 398 F. 2d 785, 790 (C.A. 2); *United States* v. *Mancuso,* 378 F. 2d 612, 619 (C.A. 4), certiorari denied, 390 U.S. 955; *United States* v. *Maius,* 378 F. 2d 716, 718–719 (C.A. 6), certiorari denied, 389 U.S. 905; *United States* v. *Mansfield,* 381 F. 2d 961, 963–964 (C.A. 7), certiorari denied, 389 U.S. 1015; *Cohen* v. *United States,* 405 F. 2d 34 (C.A. 8), certiorari denied, 394 U.S. 943, *Muse* v. *United States,* 405 F. 2d 40 (C.A. 8), certiorari denied, 393 U.S. 1117; *Feichtmeir* v. *United States,* 389 F. 2d 498 (C.A. 9); *Hensley* v. *United States,* 406 F. 2d 481, 484 (C.A. 10).

Neither *Orozco* v. *Texas,* 394 U.S. 324, nor *Mathis* v. *United States,* 391 U.S. 1, relied upon by petitioner, are apposite. In *Orozco* one of the four police officers who questioned the defendant in his own home admitted that he was "under arrest" at the time he made the incriminating statements and was not free to go where he pleased, and the Court there concluded that the suspect was "in custody" for *Miranda* purposes in view of these circumstances. *Mathis* is even more remote, since there the individual questioned was already incarcerated for another offense, and thus was plainly "deprived of his freedom of action"

when interrogated (384 U.S. at 477; see 391 U.S. at 4–5).

Respectfully submitted.

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